

IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.31554 of 2007
RAM SANJEEVAN PRASAD YADAV
Versus
STATE OF BIHAR & ORS

11 20.8.2008 Heard learned counsel for the petitioner as above, opp party nos 2 and 3, namely, Anand Rai and Sati Devi and learned Additional Public Prosecutor appearing for the State of Bihar.

Petitioner is the informant of Runnisaipur ps case no. 31/06, GR No. 260/06 lodged for offences under sections 302/34 I.P.C. In the instant case he has prayed for cancellation of bail granted to opp.party no.2 on the ground of moving a modification application being Cr Misc.No. 24346/07 for modification in order dated 8.5.2007, passed in Cr Misc. No.11418 of 2007 without making the petitioner/informant opp party as he had filed appearance in the earlier case and was heard.

The facts of the case are as follows:-

Opp parties 2 and 3 filed an application for regular bail being Cr Misc no. 11418 of 2007 . This court by rejecting bail petition of petitioner no.1, allowed bail to petitioner no.2 in the said Cr misc case, but by mistake order ran as if court was considering the grant of anticipatory bail. Petitioners in the aforesaid Cr Misc case filed modification petition being Cr misc no. 24346/07 for modification of order dated 8.5.2007, passed in Cr misc no. 11418 of 2007. This court vide order dated 25.5.2007 modified the said order allowing both the petitioners regular bail in place of anticipatory bail.

Grievance of the informant/present petitioner is that

opp.parties particularly opp party no.2 ought to have served a copy of modification petition on the counsel for the informant/petitioner who by filing vakalatnama had appeared in the first case being Cr Misc No. 11418 of 2007 and Court while passing the order in question had also heard him.

Learned counsel for opp parties 2 and 3 submitted that the main allegation is against co accused Ram Narain Rai who had repeated the fatal blow on the head causing death of the petitioner and he is still in custody. It is further submitted that opp parties are not the assailant and final report also has been submitted in favour of opp party no.3, namely, Sati Devi.

After hearing the parties, this court is of the view that once informant has filed appearance in a bail petition and was heard he ought to be made party to modification petition, if any filed for modification in respect of any order passed in earlier application. It goes further without saying that a copy of such petition should be served on learned counsel for informant.

In the circumstances, this court is left with no alternative but to recall the order granting bail to op.party no.2. (Anand Rai). He must surrender in the court below forthwith.

He is at liberty to move this court for grant of bail, if so advised.

With the aforesaid observations, this application is allowed to the extent above.

Shashi.

(S.P.Singh,J).